

U.S. v. Alvarez, --- U.S. --- (2012)
Decided June 28, 2012

FACTS: The Court began by noting that “lying was his habit.” Alvarez had lied about several things before he announced that he “held the Congressional Medal of Honor¹” while attending a meeting as a board member of a California local water district board. The Court noted his “statements were but a pathetic attempt to gain respect that eluded him.” The statements did not appear to have been made to get employment or reap any particular benefits.

Alvarez was charged under the federal Stolen Valor Act, for lying about having received the Medal. (The Act applies to all honors, but with an enhanced penalty with respect to the Medal.) The U.S. District Court denied his claim that the statute violated the First Amendment. He appealed, and the Ninth Circuit Court of Appeals ruled it invalid for that reason. The government requested certiorari. While that request was pending, the Tenth Circuit found the act constitutional.² As such, that set up a conflict between the Circuits as to the Act’s validity and the U.S. Supreme Court accepted review.

ISSUE: Is the Stolen Valor Act of 2008 a violation of the First Amendment?

HOLDING: Yes

DISCUSSION: The Court began by acknowledging the extraordinary honor conveyed by the Medal. However, the Court noted that “fundamental constitutional principles require that laws enacted to honor the brave must be consistent with the precepts of the Constitution for which they fought.” The Court noted that “when content-based speech regulation is in question ... exacting scrutiny is required” and agreed that the First Amendment is “sometimes inconvenient.” The Court conceded that there was no question but that Alvarez lied about the Medal. However, the Court noted that content-based restrictions on speech have traditionally been restricted only to those situations that are “intended, and likely, to incite imminent lawless action,” defamation, “fighting words,” child pornography, fraud, true threats and “speech presenting some grave an imminent threat the government has the power to prevent.” Missing from that list is “any general exception to the First Amendment for false statements.” The Court declared this comports with the “common understanding that some false statements are inevitable if there is to be an open and vigorous expression of views in public and private conversation, expression the First Amendment seeks to guarantee.” The Court disagreed with the Government’s arguments that false statements fall outside of First Amendment protections, noting that cases cited by the Government for that assertion all involve “defamation, fraud, or some other legally cognizable harm associated with a false statement, such as an invasion of privacy or the costs of vexatious litigation.” The Court also declined to equate the issue at bar to

¹ The editor recognizes that the phrase is technically incorrect and it should simply be called the Medal of Honor.

² U.S. v. Strandlof, 667 F.3d 1146 (2012)

those situations where a subject lies to a Government official, commits perjury or speaks as if one is a Government official.

The Court pointed out that a plain reading of the statute indicates it applies “to a false statement made at any time, in any place, to any person.” In this case, the “lie was made in a public meeting, but the statute would apply with equal force to personal, whispered conversations within a home.” The statute applies “entirely without regard to whether the lie was made for the purpose of material gain.” The Court continued, noting that “our constitutional tradition stands against the idea that we need Oceania’s Ministry of Truth.”³ If this statute was upheld, “there could be an endless list of subjects the National Government or the States could single out.”

The Court emphasized, however, that “where false claims are made to effect a fraud or secure moneys or other valuable considerations, say offers of employment, it is well established that the Government may restrict speech without affronting the First Amendment.”⁴

Further:

Were the Court to hold that the interest in truthful discourse alone is sufficient to sustain a ban on speech, absent any evidence that the speech was used to gain a material advantage, it would give government a broad censorial power unprecedented in this Court’s cases or in our constitutional tradition. The mere potential for the exercise of that power casts a chill, a chill the First Amendment cannot permit if free speech, thought, and discourse are to remain a foundation of our freedom.

The Court discussed the long history of military honors, and specifically, the meaning of the Medal. The Medal of Honor is “reserved for those who have distinguished themselves ‘conspicuously by gallantry and intrepidity at the risk of his life above and beyond the call of duty,’” and related several instances that resulted in the award of the Medal. It agreed that the Government had a very strong interest in “protecting the integrity of the Medal of Honor.” But that did not end the matter, as the First Amendment further requires that the speech restriction must be “actually necessary” and that there must be a “direct causal link between the restriction imposed and the injury to be prevented.” That link, in this case, has not been shown, with no evidence presented that a false claim dilutes the general impression of the military honor. Even if actual Medal holders “might experience anger and frustration,” the Government acknowledged, in an amici brief, that “there is nothing that charlatans such as Xavier Alvarez can do to stain [the Medal winners’] honor.”

Further, the Government has not shown “why counterspeech would not suffice to achieve its interest” in protecting the Medal’s integrity. In fact, the facts in this case “indicates that the dynamics of free speech, of counterspeech, of refutation, can

³ A reference from George Orwell’s book, *Nineteen Eighty-Four*.

⁴ *Virginia Bd. Of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976).

overcome the lie.” Even before the FBI became involved, Alvarez’s statements were known to be false and he suffered tremendous public ridicule. The “outrage and contempt” shown for the lies “can serve to reawaken and reinforce the public’s respect for the Medal, its recipients, and its high purpose.”

The Court affirmed:

The remedy for speech that is false is speech that is true. This is the ordinary course in a free society. The response to the unreasoned is the rational; to the uninformed, the enlightened; the straight-out lie, the simple truth.”

The Court continued: “The First Amendment itself ensures the right to respond to speech we do not like, and for good reason.” The suppression of speech by the federal government “can make exposure of falsity more difficult, not less so.” Open discussion is “not well served when the government seeks to orchestrate public discussion through content-based mandates.” The Court offered several ways the Government could protect the integrity of the Medal, including simply publicizing a list of those who had received it, and decried the Government’s insistence that it was not feasible to do so.⁵ The Court emphasized that “truth needs neither handcuffs nor a badge for its vindication” and agreed that “only a weak society needs government protection or intervention before it pursues its resolve to preserve the truth.”

In holding that the Stolen Valor Act impermissibly infringed upon protected speech, the Court concluded:

The Nation well knows that one of the costs of the First Amendment is that it protects the speech we detest as well as the speech we embrace. Though few might find respondent’s statements anything but contemptible, his right to make those statements is protected by the Constitution’s guarantee of freedom of speech and expression.

The Court affirmed the decision of the Ninth Circuit Court of Appeals.

Full Text of Opinion: <http://www.supremecourt.gov/opinions/11pdf/11-210d4e9.pdf>.

EDITOR’S NOTE: *Because this Opinion emphasized that Alvarez did not receive, or even apparently attempt to receive, any material benefit from his claim, this decision does not appear to call into question KRS 434.444, which criminalizes a misrepresentation of military status when it is done with the intent to defraud, obtain employment, or to be elected or appointed to a public office. The Opinion specifically left open that doing so might subject one to criminal penalties.*

⁵ In fact, at least one private website purports to do so. As an editorial note, the Opinion indicated that the Medal of Honor has been awarded just 3,476 times since 1861.